

REMARKS

This amendment is filed in response to the Office Action dated April 16, 2008. Claim 6 is amended by incorporating the limitations of claim 12. Claims 6 and 11 are in the case; claim 11 stands withdrawn from consideration.

Applicants respectfully traverse the rejection of claims 6 – 7 and 9 – 10 under 35 U.S.C. §103(a) as being unpatentable over Rusch (WO 93/04585) in view of Wichert et al. (WO 02/19823) ("Wichert").

While not acquiescing in the propriety of the rejection, Applicants have incorporated the limitations of claim 12 into claim 6 in order to advance the prosecution. Namely, component (ii) is now directed to the specific adjuvant bis(2-ethylhexyl)-2-ethylhexylphosphonate at a concentration of less than 0.5% w/v.

Applicants again respectfully submit that in reaching a conclusion of obviousness, the Patent and Trademark Office also must consider the "invention as a whole," which includes evidence of the invention's unexpected results. See In re Margolis, 228 USPQ 940 (Fed. Cir. 1986). More specifically, the data on pages 11 – 12 of the specification establishes that the combination in accordance with the present invention exhibits superior herbicidal effect. It is therefore respectfully submitted that the only motivation for modifying the teachings of Rush in view of Wichert to arrive at the claimed compositions and methods can only be accomplished by improper reliance on Applicants' disclosure. This data is particularly relevant to the (bis(2-ethylhexyl)-2-ethylhexylphosphonate) adjuvant now specified by the claim. Accordingly, reconsideration and withdrawal of the § 103 rejection of claim 6 are earnestly requested.

Applicants note that the claims 6 – 7 and 9 – 10 (now claim 6) have been provisionally rejected on the ground of obviousness-type double patenting as being unpatentable over the claims of copending applications 11/000,700 and 10/517,872, respectively. Applicants respectfully traverse the Examiner's contention, but will consider the filing of a terminal disclaimer once allowable subject matter has been identified by the Examiner.

With the amendment and explanations presented herein, the Examiner is respectfully requested to reconsider the rejection of the claims and issue a Notice of Allowance. Applicants

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invite the Examiner to telephone the undersigned attorney of record if the Examiner feels such a call would advance the prosecution of the above-identified application.

Respectfully submitted,

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